

In the '107 patent, stopper 40 has "an aperture sized to freely slidably fit over the shank". In contrast, in the present invention "the elongated shaft and the ground penetration stopping means comprise a unitary piece of plastic material".

Claim 2 is dependent claims that narrow the scope of claim 1. Applicant respectfully submits Claim 1, as amended, is supported by the specification as originally filed. No new matter has been added.

Based on the above, applicant respectfully argues the following:

- (1) The '107 patent is teaching away from the invention disclosed in this application, therefore, the '107 patent is not available as reference for the purpose of Section 102. (See *In re Gurley*, 27 F.3d 551, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).)
- (2) At the very least, the fact that in the present invention the elongated shaft and the ground penetration stopping means comprise a unitary piece of plastic material, whereas in the '107 patent stopper 40 freely slides over the shank, patentably distinguish this invention from the '107 patent. Indeed, the '107 patent neither teaches nor suggests stopper 40 and the shank being formed from a unitary piece of plastic material.

Accordingly, applicant submits that Claims 1, 2 are in condition for allowance.

In the Office Action dated 12-5-04, the Examiner also rejected claims 3-7 under 35 U.S.C. 103(a) over Sand (6,475,107). Claims 3-5 have been amended to provide critical distances from the top surface to the ball support surface that are neither taught nor suggested in the '107 patent. Further, applicant submits evidence showing unexpected results achieved by using said distances of 37mm, 38mm and 40mm with driver club face depth of, respectively, 48mm, 49mm and 51mm (see declaration of

Scott Sarem submitted herewith). Claims 6,7 are dependent claims that narrow the scope of claims 3-5.

Applicant respectfully argues that amendments to claims 3-5 together with the evidence of unexpected results overcome the rejection under Section 103(a) (please see *In re Soni*, 54 F.3d 746, 34 USPQ 2d 1684, 1687 (Fed. Cir. 1995)). Accordingly, applicant believes that claims 3-7 are in condition for allowance. Applicant includes a clean copy of the claims as amended.

### **Conclusion**

For all the reasons advanced above, applicant respectfully submits that the application is in condition for allowance and that action is earnestly solicited.

Respectfully submitted,

Vladimir Khiterer

Enclosure

### **CERTIFICATE OF MAILING**

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Claim 1: A golf tee comprising:

(a) an elongated shaft having a concave ball support surface on one end and terminating in a ground penetrating point at its other end;

(b) a ground penetration stopping means disposed on the shaft for stopping the ground penetrating point at a predetermined depth, wherein the elongated shaft and the ground penetration stopping means comprise a unitary piece of plastic material formed by way of a process selected from the group consisting of a compression molding process, a transfer molding process, a casting process, an injection molding process.

Claim 2: A golf tee as in claim 1, wherein the ground penetration stopping means is a disk having a top surface and a bottom surface, such that the top and bottom surfaces are substantially perpendicular to the axis of the shaft, and such that the axis of the disk coincides with the axis of the shaft.

Claim 3: A golf tee as in claim 2, wherein the distance from the top surface to the ball support surface is about 37 millimeters.

Claim 4: A golf tee as in claim 2, wherein the distance from the top surface to the ball support surface is about 38 millimeters.

Claim 5: A golf tee as in claim 2, wherein the distance from the top surface to the ball support surface is about 40 millimeters.

Claim 6: A golf tee as in claim 5, wherein the diameter of the disk is ranging from about 5 millimeters to about 20 millimeters.

Claim 7: A golf tee as in claim 5, wherein the diameter of the disk is about 10 millimeters.